To:        FAU Research Community

From:    Dr. Daniel Flynn, Vice President for Research

Re:        Section 889 of 2019 National Defense Authorization Act (NDAA)
“Covered Telecommunications Equipment and Services” Regulation

Date:     April 13, 2021

Purpose
This compliance notice is intended to serve as a reminder to the Florida Atlantic University (FAU) research community of the restrictions imposed by Section 889 of the 2019 National Defense Authorization Act (NDAA) “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.”

Background
Prompted by security concerns, Congress passed Section 889 of the NDAA, which is comprised of two parts. Part A of Section 889, which went into effect on August 13, 2019, prohibits federal agencies from entering, renewing, or extending contracts and awards with federal contractors that provide “covered telecommunications equipment or services” to the U.S. government. Part B of Section 889, which went into effect on August 13, 2020, prohibits federal agencies from entering, renewing, or extending contracts and awards with federal contractors that use “covered telecommunications equipment or services.”

“Covered Telecommunications Equipment and Services” are:

A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
B. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
C. Telecommunications or video surveillance services provided by such entities or using such equipment; and
D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Requirements
Absent a specific waiver provided by a federal agency, FAU may not provide to the U.S. government or use “covered telecommunications and surveillance equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system anywhere in its operations or processes, even if unrelated to a federal contract or grant. To this end, FAU is required to provide a
representation to the U.S. government that it is not using covered telecommunications equipment or services (FAR clause 52.204-24) or, if it is, to disclose the same and seek a waiver of the prohibition. Should the use of covered telecommunications equipment or services be detected during a contract, there is a **one business day** reporting requirement upon identification of covered telecommunications equipment or services during contract performance (FAR clause 52.204-25).

Be aware that federal sponsors have changed their regulations/terms and conditions to include Section 889 and your federal award is impacted by this requirement. Additionally, Section 889 of the NDAA provides certain U.S. agencies with the authority to add additional entities to this list of prohibited companies at its discretion.

**Your Responsibilities**

The FAU Procurement Department has updated its contracting forms to require a representation from all vendors that they are compliant with Section 889. Additionally, the FAU Office of Information Technology Department (OIT) has reviewed FAU's central information technology infrastructure and will continue to review it and new additions to the infrastructure for compliance.

Principal Investigators are responsible for being mindful of this prohibition, including reviewing existing specialized equipment and services used in their offices and labs for compliance and being mindful of the prohibition in requisitioning future purchases of telecommunications equipment and services.

**Frequently Asked Questions**

1. **My department, office or lab is not funded by the U.S. Government, do the prohibitions against using covered telecommunications equipment or services apply to my work at Florida Atlantic University?**
   Yes, the prohibition on using covered telecommunications equipment or services applies regardless of whether the use is in performance of work under a Federal contract.

2. **If I have a personal cell phone that is covered telecommunications equipment (e.g. a Huawei phone), may I continue to use it?**
   Do not use the cell phone for University work. However, you may use the cell phone for personal use.

3. **Does it matter if the equipment or service being used was purchased prior to the effective date of these laws / regulations?**
   No, the prohibition on use of covered telecommunication equipment or services applies regardless of when the equipment was purchased or when the services were initiated. The FAU Procurement Department has conducted a review of prior purchases to ensure FAU is in compliance. However, because of the breadth of the prohibition, it is possible that the review may not have detected all covered telecommunications equipment or services. If you believe you may be using covered telecommunications equipment or services reach out to FAU OIT immediately for assessment and guidance.
4. **My department, or the University, has identified covered telecommunications equipment that was purchased for our departmental use. Are we responsible for replacing this equipment immediately?**

   Should this be discovered, contact the FAU OIT office immediately. The University will assess the action that needs to occur, and next steps will be determined and communicated.

5. **Which countries are considered a “covered foreign country”?**

   At the time of this notice, the only “covered foreign country” under NDAA Section 889 is the People’s Republic of China.

6. **What constitutes a “substantial or essential component” of a system?**

   Section 889 defines “substantial or essential component” as any component necessary for the proper function or performance of a piece of equipment, system, or service.

7. **What qualifies as a “critical technology”?**

   Section 889 defines “critical technology” as: 1) Defense articles or defense services enumerated on the United States Munitions List (USML) of the international Traffic in Arms Regulations; 2) technologies identified on the Commerce Control List (CCL) of the Export Administration Regulations; 3) Certain technologies specifically designed for nuclear facilities, equipment, materials, and software; and 4) Select agents and toxins covered by Title 7, 9, and 42 of the Code of Federal Regulations.

8. **How would I determine if a company is a subsidiary or affiliate of Huawei Technologies Company or ZTE Corporation?**

   The Department of Commerce’s Bureau of Industry and Security maintains the “Entity List” which identifies the subsidiaries and known affiliates of Huawei Technologies Company or ZTE Corporation. The Entity List may be found on the Bureau of Industry and Security’s website (www.bis.doc.gov/).

If you have any questions or concerns about this regulation, please contact the Office of the Vice President for Research.